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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91217188
Party	Defendant Fairmont Holdings, Inc.
Correspondence Address	KIMBERLY KOLBACK LAW OFFICES OF KIMBERLY KOLBACK 1395 BRICKELL AVENUE, SUITE 800 MIAMI, FL 33131-3302 UNITED STATES kim@kkolbacklaw.com
Submission	Answer
Filer's Name	Kimberly Kolback
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Date	08/10/2014
Attachments	answer and affirmative defenses.pdf(30468 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Philip Restifo,
Opposer,

v.

Opposition No.: 91217188
Mark: ALEC BRADLEY BLACK MARKET
Serial No.: 86083890

Fairmont Holdings, Inc.,
Applicant.

ANSWER AND AFFIRMATIVE DEFENSES

Applicant, Fairmont Holdings, Inc., a Florida corporation, by and through undersigned counsel, hereby files this Answer And Affirmative Defenses as follows:

ANSWER

1. Applicant is without knowledge as to the allegations contained within Paragraphs 1, 3 and 5, and therefore denies same and demands strict proof thereof.
2. Applicant admits Paragraph 6 and 7.
3. Applicant denies the allegations contained within Paragraphs 2, 4, 8 and 9 as stated, and demands strict proof thereof.

Any allegation not specifically admitted herein is denied.

AFFIRMATIVE DEFENSES

Further answering Opposer's Complaint, Applicant states in the affirmative and the alternative as follows:

- A. Opposer applied to register BLACK MARKET WINE & SPIRITS on April 16, 2007 and claimed use of the mark since February 1, 2009. Upon information and belief, Opposer had not used BLACK MARKET WINE & SPIRITS as a valid trademark on any or all of the goods listed in its application at the time it acquired its registration for BLACK MARKET WINE & SPIRITS. Accordingly, Opposer's Registration is void ab initio.
- B. Opposer abandoned the use of BLACK MARKET WINE & SPIRITS as a valid trademark in connection with the goods listed in Opposer's Registration.
- C. Upon information and belief, to the extent Opposer ever made lawful trademark use of BLACK MARKET WINE & SPIRITS in connection with any or all of the goods listed in Opposer's

Registration, Opposer has ceased using the mark in connection with those goods and there is no evidence of any intent to resume use of the mark in connection with those goods in U.S. commerce.

D. Opposer is estopped, by operation of law and by virtue of its conduct, from asserting its claims.

E. By virtue of its conduct, Opposer has waived all its claims.

F. Opposer fails to state a claim upon which relief may be granted.

Applicant specifically reserves the right to allege additional affirmative defenses as they may present themselves during the discovery process.

Respectfully submitted:

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By: /s/ Kimberly Kolback/
KIMBERLY KOLBACK

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing was served by U.S. Mail on August 10, 2014 upon: Philip Restifo, 8101 West Rosada Way, Las Vegas, NV 89149.

By: /s/ Kimberly Kolback/
KIMBERLY KOLBACK